MINUTES

MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON FINANCE AND CLAIMS

Call to Order: By **CHAIRMAN MIKE COONEY,** on January 24, 2005 at 5:00 P.M., in Room 317 Capitol.

ROLL CALL

Members Present:
Sen. Mike Cooney, Chairman (D)
Sen. Keith Bales (R)
Sen. Gregory D. Barkus (R)
Sen. John Brueggeman (R)
Sen. John Cobb (R)
Sen. Steven Gallus (D)
Sen. Ken (Kim) Hansen (D)
Sen. Bob Hawks (D)
Sen. Bob Keenan (R)
Sen. Rick Laible (R)
Sen. Lane L. Larson (D)
Sen. Greg Lind (D)
Sen. Don Ryan (D)
Sen. Trudi Schmidt (D)
Sen. Corey Stapleton (R)
Sen. Jon Tester (D)
Sen. Dan Weinberg (D)
Sen. Carol Williams (D)

Members Excused: Sen. John Esp (R)

Members Absent: None.

Staff Present: Prudence Gildroy, Secretary
Taryn Purdy, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing & Date Posted: SB 240, 1/18/2005
Executive Action: SB 41; SB 240

Clayton Schenck, Legislative Fiscal Analyst, presented the Legislative Budget Analysis 2007 Budget Volume 5: Governor Schweitzer Budget Revisions.

EXHIBIT(fcs18a01)

Mr. Schenck expressed appreciation to the budget office for their cooperation and to staff. Virtually all of the Martz Budget was rolled into the Schweitzer budget. Volumes 1-4, which provided analysis of the Martz budget, still had pertinent information for the subcommittees, he said. The Schweitzer amendments were substantial compared with changes in prior administrations, but a revision of $80 million in a budget of nearly $3 billion was really on the margin, according to **Mr. Schenck.** Volume 5 explained the $80 million in changes that were proposed by the Schweitzer administration and compared it to the total budget. He described it as a supplement to Volumes 1-4 to be used in conjunction with those volumes, especially in the subcommittees. The Martz budget proposed almost $273 million in additional general fund, an increase of about $10.6 million. The Schweitzer budget provided for a $330 million increase, which brought the percentage increase up to about 12.8%. These were biannual numbers. Of the nearly $57 million in general fund, the largest amounts were for K-12 education, human services, and economic development. In regard to total funds, the original Martz budget had a nearly $700 million increase. The Schweitzer budget increased that to $813 million and the percentage went from 10.1% to 11.8%. That largely had to do with adding the I-149 cigarette tax increase to total funds. In general, the changes that **Governor Schweitzer** recommended were incremental. They were additions to the Martz budget and the only significant re-prioritization was redirecting $5 million for the Shared Leadership Program in Higher Education to the Student Assistance Plan. The other significant change was the Portfolio Services in the **Department of Health and Human Services (DPHHS).** That was largely related to adding I-149 money to both general fund and state special, with a significant increase for LIEAP, foster care, and expansion of the CHIP program. In terms of fund balance for the general fund, the Martz budget left $162 million proposed ending fund balance but recommended the Legislature adopt an $80 million ending fund balance. The additional $80 million they were leaving on the table was for issues of education funding and others they recognized the Legislature would have to deal with. The Schweitzer budget reduced the ending fund balance to $80 million, the same level recommended in the Martz budget. The table on page 1, figure 1, summarized what changed for the general fund. I-149 revenues added $10 million; $74 million in HB 2 recommended spending; $13 million in increased supplementals; and the pay plan negotiated settlement.

The table was based on a three-year viewpoint to take into consideration the supplemental adjustments in the current year. He noted $8.5 million of the supplemental was due to a timing issue in terms of the negotiated settlement of the Highway Patrol lawsuit. Almost 70% of the proposed increases by the Schweitzer administration were in the areas of public schools and human services. The Martz budget for K-12 education was largely present law. New initiatives would increase that by $40.8 million, primarily for the increase in Base Aid schedules of $250 per ANB (average number belonging), another $50 per ANB in high schools and a 3.5 percent increase in special education, increased expenditures for school facility payments, and an educational information database. The $10.4 million increase in human services was largely an increase in LIEAP (Low Income Energy Assistance Program)funding of $8.4 million, with a supplemental of $1.7 million. The rest was due to replacement of tobacco settlement funds with general fund for a number of programs, increased foster care payments and an increase in enrollment in CHIP, funded with tobacco settlement and cigarette tax revenues with additional federal fund match. Increased revenues from the cigarette tax would also add funding for prescription drugs, Medicaid provider increases, increased Medicaid enrollment due to the proposed Medicaid HIFA waiver, and tax credits for small employers that provide health insurance. There were two initiatives for Higher Education: 1) increased student assistance of $5 million and 2) increased tribal college support of $2.8 million. Those were offset partially by the shift from the Shared Leadership proposal in the Martz budget. Corrections received no new funding beyond the amount recommended by Governor Martz. Economic development projects would add $7 million. The Governor would also continue funding the Judiciary's court automation project, provide funds to expedite the water adjudication project, allow remedial investigation and feasibility studies on two environmental sites, fund additional revenue auditors to increase state revenues, and reinstate the Agricultural Heritage Program. A table on page 4 showed where the increases would be compared to the Martz budget. The Executive's proposal reduced the ending fund balance to $80 million. That was according to **LFD** revenue estimates; HJR 2 as proposed, and the **Revenue and Transportation Interim Committee** had a different set of revenue estimates that the Legislature was working from. The first year had to be adjusted because some supplemental appropriations had been moved from 2007 into 2005 for the Crow Tribe Settlement, as well as paying off the computer loan for the IRIS system in the **Department of Revenue.** Those were in the Martz budget in 2007. This would give a different starting point, but ultimately the same bottom line. Figure 6 on page 9, showed general fund balance was projected to be a positive $274.2 million before any new proposals or initiatives were considered. Figure 8, on page 10, showed an $84.2 million ending fund balance for the Schweitzer budget after new proposals and initiatives using legislative revenue estimates in HJR 2. The comparison between bienniums was shown as required by 17-7-151, MCA. Graphs were explained that compared the Schweitzer and Martz budgets. A chart was referred to that showed Schweitzer budget one-time only initiatives on page 25. A figure on page 26 discussed fund switches in DPHHS. Figure 27, on page 27, showed the supplemental appropriations. Figure 28 and 29, on page 29, explained the pay plan. Policy issues included film industry tax credits, expanding the business equipment tax exemption, and creating the economic development trust fund within the coal tax trust fund. The K-12 lawsuit was discussed on page 33. When the Schweitzer and Martz proposals were included, total general fund increases for distribution to schools was $64 million; with federal increases of $35 million, the increase in the total distribution to schools in the executive budget was $99 million. While these proposals may contribute to a temporary fix for the school funding issue, the long-term solution will require a revised funding methodology based on a statutory definition of quality education and educationally relevant factors. He referred them to page 18 of the addendum for a detailed discussion of the I-149 cigarette and tobacco tax increases. He noted that the Schweitzer revisions included a proposal for creation of a reserve account of $27 million to deal with the issue of a declining revenue source for this category. He suggested several of the proposals needed to be examined carefully to ensure compliance with statute authorizing the use of the funds, including support of base level of Medicaid and mental health services plan costs, support of base level CHIP enrollment levels, and development of the reserve fund. When legislative revenue estimates were applied, there was a positive structural balance. He pointed out there was no requirement that the governor's budget be below the expenditure limitation. The Martz budget was more than $12 million over the cap. The Schweitzer budget called for increased spending and yet was under the cap. There were almost $100 million in increased expenditures, but by moving $37 million in supplementals to the base year and taking it out of the 2007 biennium, the difference was reduced. Legal opinion was it had to based on when the money is available for the expenditure. He pointed out there had been changes in how appropriations and transfers were done since the expenditure limitation statute, which might enter into their considerations. The executive budget was below the statutory expenditure limit by $69 million, but **Mr. Schenck** argued that did not mean it won't become an issue during this session. The $37 million in a reserve fund proposed for the cigarette tax money, if they chose to apply that, would move them towards the expenditure limit. There was also the potential of running up against the cap in the state special revenue category. Regarding the ending fund balance adequacy, the proposed $80 million is close to the three percent recommended by the **LFD** and the National Conference of State Legislators (NCSL). He pointed out the $80 million fund balance did not include any specific reserve for wildfire suppression or declared disasters or emergencies. Those averaged nearly $15 million per biennium. There is no specific reserve for agency supplemental appropriations, which had never been less than $11.5 million in the last 10 biennia and averaged nearly $25 million per biennia. In total, that would consume half of the $80 million reserve. The most volatile component of the state budget was the revenue estimates, he declared. A one percent variation would be nearly $30 million. He referred to a table of agency budget revisions on page 41. He indicated the detail, the narrative behind them, and issues and comments by staff were in the addendum.

Questions from the Committee:

SEN. BOB KEENAN advised two years ago they had a little skirmish about setting aside money for wildfires, which had never been done before and they didn't have any money to set aside in the budget for wildfire. This time there is money and it is not being set aside. He wondered about the reason. **Mr. Schenck** clarified the Legislature had never budgeted for wildfires. When the **LFD** did their analysis two years ago, given the fact that there was a $60 million appropriation/authorization for emergencies, and the fact that the fire season averages $15 million a year, they made the decision that the Legislature ought to set aside about an $18 million reserve. He indicated the message was clear last time and so they did not include the recommendation this time. They were pointing out in their narrative that this needs to be kept in mind.

{Tape: 1; Side: B}

SEN. GREG BARKUS asked about the history of supplemental appropriations and the transition from one governor and administration to another. He wondered if $49 million was a large number or if it was average. **Mr. Schenck** advised $50 million would be on the high side. He looked at the last ten years, threw out the high and low side, and they averaged about $25 million. They were all over the map and had been as low as $11.5 million and as high as $82 million. The year that they were $82 million was also a year when the administration changed. He thought $50 million was artificially high. The recommendation to move the payments for IRIS and the Crow Tribe Settlement from FY 2007 to FY 2005 was a matter of dealing with the expenditure limitation. It was recommended in a letter from the Martz administration after the budget was out and was incorporated into the Schweitzer budget. The $12.7 million in the Martz budget was a small amount, he contended. Of the $13.4 million that was added, $8.5 million was a litigation settlement. The proposed settlement came in December, after the Martz budget was out. When those items were factored in, **Mr. Schenck** did not think it was a large number. There were some additions related to the change in administrations for termination pay. **SEN. BARKUS** asked if there was a political statement being made. **CHAIRMAN COONEY** asked if he was making one. He thanked **Mr. Schenck** for his presentation.

CHAIRMAN COONEY turned the chair over to **SEN. CORY STAPLETON.**

HEARING ON SB 240

Opening Statement by Sponsor:

SEN. MIKE COONEY (D), SD 40, Helena, opened the hearing on **SB 240,** Clarify status of existing INTERCAP loans. During the **Board of Investment's** most recent audit, the Legislative Audit office disclosed a potential problem in some state agency loans financed through the INTERCAP program. The Legislative Audit office believes these loans could be considered state debt. SB 240 reauthorizes the loans in question and specifically states that the loans are state debt and require a 2/3 vote of each House of the Legislature. The INTERCAP program was established in the late 1980s as a way for Montana local governments to finance a variety of projects with low interest money. The program has grown to include loans to the **University System,** and to state agencies that were specifically authorized through legislation to borrow through the program. INTERCAP has financed projects in all 56 counties of the state. Since its inception, 1028 loans to 402 eligible governments totaling $198,853,753 were financed through INTERCAP.

EXHIBIT(fcs18a02)

Proponents: **Carroll South, Board of Investments**
Larry Fasbender, Department of Justice

Opponents: None.

Proponents' Testimony:

Carroll South, Board of Investments, advised the Board was an innocent bystander in the situation and did what the Legislature asked them to do. The **Legislative Auditor** later found the loans were not properly authorized by the Legislature. The auditor said in the disclosure in their most recent audit that they believe some of these recent **INTERCAP** loans should be considered state debt because the source of repayment is revenue derived from the state's taxing power. These authorizations given by the Legislature to the **Board of Investments** to lend money were not considered state debt and although most of them received a 2/3 vote in each House there was no language in the bill itself declaring that they were state debt. This bill essentially grandfathers in all of those loans, that were either authorized or are outstanding, that the Board believes could constitute state debt. A second bill will make sure they don't get in this situation again and clearly specify which types of loans made to state agencies from the INTERCAP program are state debt and which aren't. Those that are state debt need a 2/3 vote in each House. He stressed the importance of this program. Local governments have used it for 17 years to buy police vehicles, sheriff vehicles, fire engines, road graders, and building improvements. They believe the current status of this disclosure by the auditor could jeopardize the program. As opposed to the Coal Tax Loan Program, this is not state money they are lending. This is money that they borrow from private investors from the issuance of tax exempt bonds. These bonds are not long-term bonds and are re-marketed every March. They have to disclose this problem to investors if they don't get it fixed by February 11. Their hope was that the committee would approve the bill and they can get a 2/3 vote in both houses and a signature from the Governor prior to February 11. This bill would not cost any money or increase debt that is not already there. It does not increase or decrease the amount of revenue required to pay back the loans and does not change any funding source. The bill classifies existing loans previously authorized by the Legislature as state debt and requires a 2/3 vote of each house.

Larry Fasbender, Department of Justice, advised three of the loans in the legislation were with the **Department of Justice.** The Department supported the legislation and they were aware of the problem. The question had never been litigated as to whether or not the Legislature has to be informed in advance that it requires a 2/3 vote. SB 240 re-authorizes those loans and informs the Legislature in advance that it takes a 2/3 vote. The Department thinks they met the criteria as far as the state was concerned and if this did constitute state debt that a 2/3 vote by the Legislature legally authorized the existing loans as far as the **Department of Justice** was concerned. They thought this was a quick, simple, and easy way to clarify all the problems that might exist and urged that the legislation be passed. Without the 2/3 vote, there would be serious problems. He reiterated this does not change the status quo, does not increase the cost as far as the existing loans are concerned, and does not constitute any additional state debt.

Questions from Committee Members and Responses:

SEN. BOB HAWKS asked if this had implications for bonding capacity or bond rating. **Mr. South** advised this would have an insignificant impact on the state's investment rating. Moody's just gave the state a rating on $15.8 million worth of refunded bonds of AA3, which is only two or three notches down from the US Treasury. One of the reasons for that was the low general obligation debt level that the state currently has. In terms of the overall debt level of the state, he did not believe this would change the rating at all. Moody's was aware of this problem and was aware of this bill. **SEN. HAWKS** asked if there was a bonding capacity limit in statute. **Mr. South** indicated there was a bonding limit for the INTERCAP program, but as far as he knew the state did not have a general obligation debt limit like local governments have. What limits the ability to issue debt is the rating. The lower the rating the more has to paid in interest.

Closing by Sponsor:

SEN. COONEY closed on the bill. He explained a housekeeping amendment on page 2 of the bill (SB024001.agp).

EXHIBIT(fcs18a03)

He asked for a quick and favorable vote on the bill and the amendment.

EXECUTIVE ACTION ON SB 41

SEN. BOB KEENAN advised SB 41 would establish some principles for the **Department of Public Health and Human Services** to use when they are in financial straits. The bill was trying to put the Legislature's fingerprints on decisions that need to be made when they are not in session. There was a lot of pressure to have a special session when there was a budget shortfall a couple of years ago. The department and administrators in the department were in a very difficult position trying to figure out where they could make cuts in various programs. They wanted legislative input into the principles so they could understand what the Legislature wanted to do when they were not here. He noted the concern of **SEN. BOB LIND** about prevention in the bill. He stressed the importance of the bill should the state run into budget shortfalls in the future and when legislators start getting calls at home about cuts. He said the bill did not matter during the current budget situation but would matter if they get to that point again. Further, he thought the principles could apply if there was additional money available to the department. A couple of years ago, when they were making cuts in the Mental Health Services Bureau, and at the same time the Developmental Disability Bureau was giving provider rate increases. Those kinds of things happen, he maintained, and this was an opportunity to provide principles. The bill may address spending priorities as well as spending cut priorities, he stressed. He encouraged consideration of the bill. Those who served on the subcommittee over the past years know what the bill means and he thought the bill deserved attention from 150 legislators because it makes a difference.

Motion: SEN. COBB moved that SB 41 DO PASS.

SEN. LIND advised the amendment **SB004101.ATP** would add the word "illness". He said situations could arise in a budget shortfall where this would give a little more support for preventive services such as vaccinations, etc.

EXHIBIT(fcs18a04)

Motion/Vote: SEN. LIND moved that SB004101.ATP BE ADOPTED. Motion carried 17-1 with SEN. STAPLETON voting no by voice vote.

Motion: SEN. COBB moved that SB 41 DO PASS AS AMENDED.

SEN. KEENAN commented he would welcome amendments on the floor. He encouraged spreading the word to Senate and House members to get their fingerprints on this if there were further considerations. He thought this was a significant bill and wanted to get everybody involved.

SEN. CORY STAPLETON asked if the amendment opened a huge pool that would give priority to people with an illness. He thought this might be too broad. Services that protect life, severe pain, and significant disability, were a pretty high threshold. He noted gambling addiction is called an illness. **SEN. KEENAN** thought **John Chappuis, DPHHS,** should comment. **Mr. Chappuis** advised Medicaid services include injury as well as illness. He didn't see it as a true expansion because those services were already authorized. He thought it would help the department to delineate between those services and make decisions for either cuts or expansions. Medicaid services were broad in nature already. **SEN. STAPLETON** asked if in trying to give legislative direction they had made it harder for the Department to draw the line. **Mr. Chappuis** acknowledged this would expand it somewhat in terms of the Department's decisions, but he said they would give emphasis in many cases to cutting off a service entirely. That was done last time when they cut off dental for adults except for emergencies.

SEN. DAN WEINBURG asked **Mr. Chappuis** for a list of five Medicaid items that would not be covered by these priorities. **Mr. Chappuis** said nursing care, in-patient hospital physician services, clinic services, etc., are mandatory under federal rules and would not be subject to a reduction. The services that can be cut are what are referred to in federal regulation and also in state law as optional services. **SEN. WEINBURG** asked what items could be cut. **Mr. Chappuis** indicated optional services could be cut. Pharmacy could be cut, but that would be a foolish cut because that would result in higher-m cost services. Mental health services could be cut. Children's services that are medically necessary are mandatory services under federal law. Optometric, podiatry, dental for adults and a list of twenty or thirty of those type services could be reduced. Also, provider rates were a way to reduce the budget.

{Tape: 2; Side: A}

SEN. DON RYAN asked if they would have made different decisions if this had been in place. **Mr. Chappuis** responded they probably would have initially and it probably would have helped to guide them. He stated he had been with Medicaid for twenty-five years and they had hardly ever made significant cuts, and it was very difficult. They looked at their goals and objectives for the Medicaid program but had very tight time-lines. He held this would have helped them make decisions on providers. They could not have cut services to mandatory services in terms of cutting the rates. The cuts were done in a very short time-frame and it was a mess. **SEN. RYAN** asked again, if this had been in place, would they would have made different choices in those cuts. **Mr. Chappuis** advised they made some across-the-board cuts. They probably would have been better about picking and choosing based on some of these principles. He believed ten years from now, if someone else is in his position that never made cuts before, this will help them think through a crisis.

SEN. KEENAN recalled in the redesign process they thought it would be better to eliminate one program than make across the board cuts. He noted mental health for children and adults were separate now because many times the children's mental health providers take the brunt of the cuts. Advocacy is much bigger on adult mental health than children's mental health.

SEN. BALES asked how **Mr. Chappuis** would define "illness" in the amendment and what programs that would affect. Dental was one of the programs that would still be cut. Some dental problems are, to a certain extent, an illness. **Mr. Chappuis** indicated certain dental conditions could be an illness, but adult dental would still come under consideration. They would also look at the severity of the illness. They would look at the social and medical condition and take that into account as well as the severity of the illness.

SEN. HAWKS said there was a program in Oregon about ten years ago with a priority ranking on Medicaid services. He wondered how that met its end and if it was a legal end. **Mr. Chappuis** said its end was not as much a legal end as it was a failure to be able to prioritize in the method that was prescribed when they actually had to make their cuts. He recalled it wasn't something that was found to be illegal or inappropriate. A lot of it had to do with the pleas that were brought forward from constituents, according to their Medicaid director. Those were things that were maybe not considered when it was put together in the calm of day versus when the person was standing before the legislature or the executive with the disability or problem.

SEN. LIND advised he discussed the amendment with several folks in **DPHHS.** It was his understanding that the modifier "significant" also modified "illness". His intent was to prevent serious illness when possible.

Vote: Motion passed 18-0 by voice vote.

Motion: SEN. COBB moved that SB 240 DO PASS.

Motion: SEN. COBB moved that SB024001.ATP BE ADOPTED.

Motion/Vote: SEN. COBB moved that SB 240 DO PASS AS AMENDED. Motion carried 18-0 by voice vote.

ADJOURNMENT

Adjournment: 6:15 P.M.

____
SEN. MIKE COONEY, Chairman

____
PRUDENCE GILDROY, Secretary

MC/pg

Additional Exhibits:

EXHIBIT(fcs18aad0.TIF)